IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

WP(C).No. 26451 of 2005(Y)

AGAINST THE ORDER DATED 06/02/2005 IN IA1196&1197/2001. IN OPARB.37/1989 of SUB COURT,KOTTARAKKARA

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PETITIONER:

V.M.VARKEY, CONTRACTOR,
VELIYATHU HOUSE, MUDAVOOR P.O.,
MUVATTUPUZHA.

BY ADV. SRI.P.K.BALAKRISHNAN NAIR

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED
BY THE CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, TRIVANDRUM.

2. THE SUPERINTENDING ENGINEER,
K.I.P.CIRCLE, KOTTARAKKARA.

BY ADV. SRI.SHYSON P. MANGUZHA, GOVT. PLEADER.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE PETITION FILED BY THE PETITIONER OP NO.37/89 BEFORE THE SUB COURT, KOTTARAKKARA DT.15.07.89.

EXT.P2 : TRUE COPY OF THE ORDINANCE "KERALA REVOCATION OF ARBITRATION CLAUSE AND RE-OPENING OF AWARDS ACT 1998 PROMULGATED BY THE GOVERNMENT.

EXT.P3 : TRUE COPY OF THE PETITION FILED BY THE RESPONDENTS IN IA NO.162/98 IN OP NO.(ARB.) 37/89 ON 23.01.1998.

EXT.P4 : TRUE COPY OF THE STAY ORDER OF THE HON'BLE HIGH COURT OF KERALA IN OP NO.4206/98 IN CMP NO.7607/98 DT.25.3.1998 OF THE HON'BLE HIGH COURT OF KERALA.

EXT.P5 : TRUE COPY OF THE ORDER OF THE SUBORDINATE JUDGES COURT, KOTTARAKKARA IN OP(ARB.) NO.37/1989.

EXT.P6 : TRUE OCPY OF THE REVIEW PETITION FILED BY THE PETITIONER IN OP (ARB.) NO.37 OF 1989 IN IA NO.1196/01 DT.4.10.01 BEFORE THE SUBORDINATE JUDGES COURT, KOTTARAKKARA.

EXT.P7 : TRUE COPY OF THE OBJECTION FILED BY THE RESPONENTS IN OP(ARB.) NO.37/89 IN IA NO.1196/01 BEFORE THE HON'BLE SUB COURT, KOTTARAKKARA.

EXT.P8 : TRUE COPY OF THE COMMON ORDER IN IA NOS.1196 & 1197/2001 IN OP NO.(ARB.) NO.37/89 OF THE SUBORDINATE JUDGES COURT, KOTTARAKKARA DT.2.6.05.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 26451 OF 2005

Dated this the 14th day of August, 2007

JUDGMENT

Ext.P5 order dismissing IA No.162 of 1998 filed by the petitioner under Section 17 of the Arbitration Act, that the award of the arbitrator be made a rule of the court on the ground that due to the promulgation of the Kerala Revocation of Arbitration Clause and re-opening of awards Act, the IA is not liable to be allowed, and also Ext.P8 common order dismissing the petitioner's application for review of Ext.P5 and another application for condonation of the delay caused in the matter of filing the review petition are under challenge in this proceedings under Article 227 of the Constitution of India.

2. Heard Sri.P.K.Balakrishnan Nair, learned counsel for the petitioner and Sri. Shyson P. Manguzha, learned Government Pleader. Mt attention was drawn by Sri.Balakrishnan Nair to Ext.P4 interim order passed in OP No.4206 of 1998 by a Division Bench of this Court. Under Ext.P4 interim order, all the proceedings pursuant to the Act in question and all further steps or action taken under the Act stands stayed, pending disposal of the Original Petition.

Sri.Balakrishnan Nair submitted that even now Ext.P4 is in currency. Mr.Shyson, learned Government Pleader submitted that

Ext.P4 is only an interim order and that this Court is yet to finally dispose of OP No.4206 of 1998. It is true that the Original Petition in which Ext.P4 was passed is yet to be finally disposed of by this Court. But I find that the main reason in dismissing the petitioner's application for review of Ext.P5 by the learned Sub Judge is that the petitioner did not produce copy of the stay order in question, which is now produced in this case as Ext.P4. Since it is clear from Ext.P4 that, there was stay as claimed by the petitioner before the learned Sub Judge at the time of hearing of the Review Petition, I set aside Exts.P5 and P8 and direct the learned Sub Judge to reconsider IA No.162 of 1998 on its merits after hearing both sides. It is open to the petitioner to take advantage of Ext.P4 before the learned Sub Judge.

PIUS C. KURIAKOSE, JUDGE

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